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Supreme Court of the United States

OCTOBER TERM 1947

No. 504

SAMUEL SAIA, *Appellant*

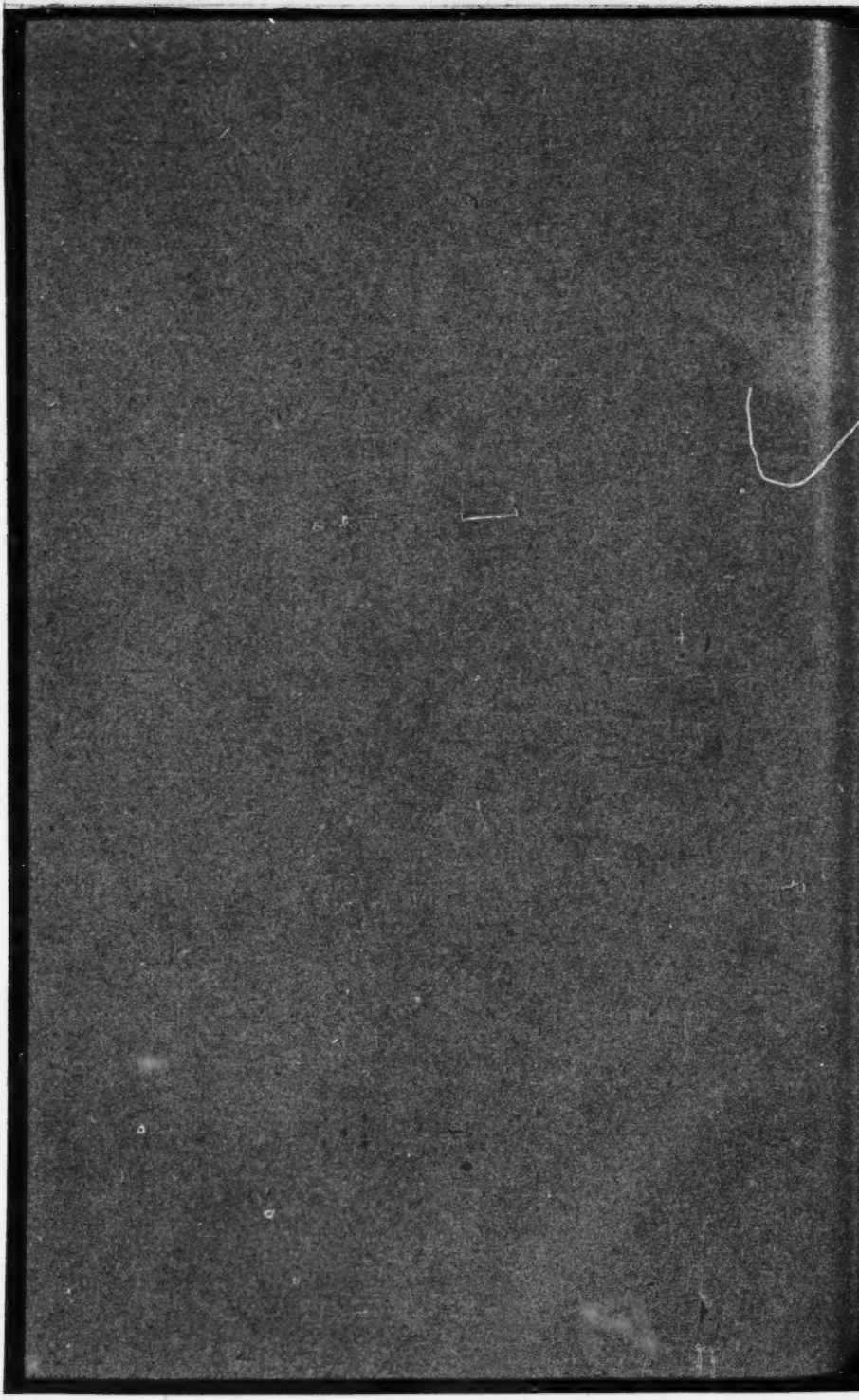
v.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF
THE STATE OF NEW YORK

REPLY BRIEF
FOR APPELLANT

HAYDEN C. COVINGTON
Counsel



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MAY IT PLEASE THE COURT:

The summary disposition of the issues by the appellee has failed to clarify. Attempted undue simplification of the problem presented by speedily reaching a factitious conclusion that the ordinance "regulates" obfuscates the issues.

The ordinance is not one that prohibits a nuisance, for operation of sound devices is not *per se* a nuisance. It is not the ordinary type of ordinance prohibiting excessive noises. It is not a zoning law regulating the use of sound-amplifying devices. The use of the term "regulation" by the appellee is a mere euphemism.

The appellee has simulated this case to that of *Cox* v. *New Hampshire*, 319 U. S. 569. The *Cox* case involved a

law exacting a fee, rather than a tax, requiring paraders to bear some of the expense and burden of policing parades. Also the law was designed, according to the construction placed upon it by the Supreme Court of New Hampshire, to regulate the time, place and manner of holding parades so as to avoid interference with traffic upon the streets. There was a clear relationship between the law and the concomitant interference with traffic by a parade.

The situation here is entirely different. The law does not exact a license fee to bear the expense of regulation. In fact, the law does not purport to regulate the use of sound devices. There is no direct or indirect connection between regulation of traffic in Lockport and the use of sound devices. The ordinance does not have the remotest relationship to control of traffic. It bans the use of all sound devices except such uses permitted by the chief of police and prohibits the use of such devices in such a manner as to annoy and disturb persons in public parks and upon the streets.

The appellee conjures up a spectre of anarchy to follow an invalidation of the ordinance of the City of Lockport. The appellee asserts that confusion will be the inevitable result of a decision favorable to appellant. It is contended that, without the ordinance in question, thirty or forty of such sound devices could be in operation at one time in one public place, each employing the greatest possible volume in an effort to drown out all others. (See Brief for Respondent, p. 6) But the scene is not as horrible and hopeless as appellee would have it appear. The hands of the City of Lockport are not tied. The police power is not shackled. The domain of the police power is broad enough to allow any regulation as to time, manner and the number of such devices permitted to be used at any one place and time in the City of Lockport.

There may be, of course, certain zones of quiet under regulatory laws such as areas immediately adjacent to

hospitals, unless, however, the hospitals are built adjacent to a public park in which event the right of the City to maintain peace and quiet for hospital patients should yield to the constitutional use of parks for assembly and free speech. Also there may be times of the day in every neighborhood when it is desirable to maintain peace and quiet. Such would allow the city to prohibit the use of sound devices during such times as, for instance, at night time during normal hours of rest and sleep.

Moreover, a city may require mechanical inspection of sound-amplifying devices so as to prevent their carrying speech beyond the arena of the listeners or the boundary of public parks.

But the Lockport ordinance is not a regulation tailored to fit any such problem. It does not regulate so as to control, but it attempts to regulate so as to prohibit and censor. Merely because the use of sound devices may be regulated as to time and manner certainly does not justify laws that prohibit and censor the use of such devices under the guise of regulation. The problem of excessive noise may be controlled by the city in any number of ways. But certain it is that, because the police power extends to regulation and control of excessive noise, it does not mean that the city may hamstring or emasculate completely the use of sound-amplifying devices in connection with public assemblies.

A more reasonable attitude toward the regulation of sound devices in cities is reflected by the publication "Radio and Municipal Regulation", 1940, issued by the National Institute of Municipal Law Officers, in co-operation with the United States Conference of Mayors. (See pp. 28-34) A copy of this report, which includes a model ordinance for the regulation of sound devices, is printed as an appendix to this reply brief. The report is referred to and made Appendix A of this reply brief for the purpose of showing the attitude of the National Institute of Municipal Law Officers and the United States Conference of Mayors on

this and related problems. However, any views that are less liberal and that are more restrictive of the use of sound devices than those expressed in the Brief for Appellant and this Reply Brief are not adopted by appellant.

In discharging its delicate and difficult task of weighing the police power of regulation on one side of the scale of justice against the heavy constitutionally secured right of free speech and assembly, extra weights should not be thrown by the Court on the police power side of the scale because of the sound-amplifying device employed.

A consideration of the modern-day use of sound devices ancillary to the exercise of free speech at public assemblies should lead the Court to as liberal a view in protecting the use of sound devices as the Court has assumed in protecting wide distribution of printed pamphlets as an adjunct to the freedom of the press.

The specious argument of appellee that the right to hold a public meeting in the park is not curtailed and that the right of Jehovah's witnesses to distribute literature has not been interfered with should not be considered in determining the validity of the ordinance.

The argument that one may hold a public meeting and at the same time be prohibited the use of sound-amplifying devices is identical to the argument heretofore condemned and rejected by this Court: "But, as we have said, . . . one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *New Jersey*, 308 U. S. 147, 161, 163.

It is the common and accepted policy of the smaller and less wealthy political and evangelistic organizations to make use of the small assembly in public parks or on private lots under the enlarged tent. Especially is this practice common in the summertime in many parts of the country. The sound-amplifying device is uniformly used at such gatherings.

The problem of reaching the ear of so many little groups of people through free speech and public assembly is especially important to the poor and small campaigner. It is necessary to leave open the free use of every device that makes effective communication of information and opinion at such assemblies. The use of sound devices is the only means of small and poor evangelists to effectively reach as large an audience as possible.

It is no answer to say that the radio, the public press or local assembly halls are available. These means are rarely accessible to the poor or unpopular campaigner or group. Frequently a person or group with an unorthodox message is denied the channel of the radio and public press by boycott or refusal of the operators of radio stations to allow time and owners of newspapers to sell space for purveying a message disliked. Thus oftentimes the well financed as well as the poor are denied access to such large channels of diffusion of knowledge.

That such avenues may be available to some, such as the big popular, orthodox religious organization, the opulent commercial organizations or the Government, does not militate against the necessity to keep the small artery of the small campaigner on political and religious subjects open to his small audiences. Free speech is not available if it is said that the speaker can rent a hall, lease radio time or buy space in the newspaper instead of using the sound-amplifying device.

The tent for the evangelist and the assembly for the campaigner are traditional and primitive methods but are still commonly used in this country, especially in rural areas. To make this common, yet ancient, method of communication of information and opinion effective, the sound-amplifying device is absolutely necessary.

Many a good and effective speaker often is found to have a weak voice. If he were denied the right to use sound-

amplifying devices, he would be barred completely from speaking to his audience.

Indeed even the best public speakers and great campaigners in state and national political contests would be silenced and cut off completely from their audiences at public assemblies if they were denied the use of sound-amplifying devices. Without a sound-amplifying system it would have been impossible for Franklin D. Roosevelt to reach his great visible audiences at Shibe Park in Philadelphia, Soldier Field in Chicago and Fenway Park in Boston during the 1944 presidential campaign. See Appendix B.

The use of sound device is not confined to campaigners on political and religious questions. It is also quite commonly used by labor organizations in presenting their side of the controversy during strikes and in an effort to get members and support. See the Jurisdictional Statement and the Memorandum on Behalf of the Congress of Industrial Organizations and Certain of its Affiliated Organizations, Amici Curiae in *Kovacs* v. *Cooper*, No. 505, October Term, 1947.

WHEREFORE, for the reasons stated in Brief for Appellant and in this Reply Brief, the judgment of the court below should be reversed and the prosecutions ordered dismissed.

HAYDEN C. COVINGTON
Counsel for Appellant

Appendix A

Radio and Municipal Regulations

NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS
Report No. 62, Washington, 1940
[P. 28]

VIII. "NOISE" PROHIBITIONS APPLICABLE TO THE USE OF RADIO RECEIVING SETS

Nearly every city has an ordinance to prevent the causing or making of unnecessary noise which disturbs the comfort or repose of persons of ordinary sensibilities under conditions making such noise a public nuisance. An example of such an ordinance provision is Section 22 of Ordinance No. 1940 of the City of Pasadena, California, reading as follows:

> Section 22. *Unnecessary Noises.* It is hereby declared to be a nuisance and it shall be unlawful for any person, firm or corporation, to make, cause or suffer or permit to be made or caused, upon any premises owned, occupied or controlled by him or it in the City of Pasadena, any unnecessary noises or sounds which are physically annoying to persons of ordinary sensitiveness or which are so harsh, or so prolonged or unnatural, or unusual in their use, time or place as to occasion physical discomfort to the inhabitants of said city, or any number thereof.

With the advent of radio and its use by nearly everyone, cities began enacting ordinances directed to the specific abuses of the use of this new noise device. Some of these ordinances are also directed to the use of radio receiving sets for commercial advertising purposes by the use of loud-speakers on store fronts or the use of sound trucks.

A. Ordinance Regulations Applicable to the General Use of Radio Receiving Sets

There is one type of ordinance containing regulations applicable to the general use of radio receiving sets so as to disturb the comfort of persons desiring to sleep after a reasonable hour at night. The Mobile, Alabama, ordinance fixes 10 P. M. to 7 A. M., and the ordinance of Boston 12 P. M. to 7 A. M. as the "quiet" period while other ordinances prohibit at all times unnecessary noise injurious to the public health and which constitutes a public nuisance. The ordinances of Mobile, Boston, Glendale, Calif., Hartford, Conn., and Pontiac, Mich., are here set forth as examples of this type of ordinance.

These municipal ordinances are an exercise of the city's police power to prevent and eliminate noise nuisances. It has been held that a radio is not a nuisance per se yet it may become a nuisance. *Weber* v. *Mann,* 42 S. W. (2d) 492 (Tex. Civ. App. 1931). In this case use of a radio loud-speaker at a roadside soft drink stand was involved.

The case of *Brachey* v. *Maupin,* 277 Ky. 467, 126 S. W. (2d) 881, 121 A. L. R. 969 (1939) digested at p. 29 *infra* sustains a noise ordinance designed to prevent public nuisances. The court held reasonable the prohibition of unnecessary noise from sound trucks during the time people usually sleep. In *People* v. *Caponigri,* 6 N. Y. Supp. (2d) 577 (Magistrate's Court, Borough of Brooklyn 1938) Park Districts rules regulating and prohibiting as a nuisance the use of voice, sound amplifiers or other mechanical devices in certain places was sustained under the city's police power.

In *Stodder* v. *Rosen Talking Machine Co.,* 241 Mass. 245, 135 N. E. 251 (1922) the court granted an injunction against operation of a loud-speaker used by a music store to broadcast phonograph records for advertising purposes. Neighboring merchants had brought suit for the injunction claim-

ing that the noise from the loud-speaker made complainants' concentration on work difficult, irritated their nervous systems, injured their health, and otherwise interfered with the conduct of their business. In *Stodder* v. *Rosen Talking Machine Co.*, 247 Mass. 60, 141 N. E. 569 (1923) the court adjudged the music store owner in contempt of court for violating the decree in the case just referred to. Other cases granting injunctions on the theory that noise from loud-speakers is a nuisance are: *Grantham* v. *Gibson*, 41 Wash. 125, 83 P. 14 (1905) and *Honnicutt* v. *Eaton*, 184 Ga. 485, 191 S. E. 919 (1937).

ORDINANCE OF MOBILE, ALABAMA

Article 2

901. *Loud Playing of Radios, Phonographs, etc., Prohibited.*—It is hereby prohibited and made unlawful for any person within the City of Mobile or the police jurisdiction thereof, between the hours of ten o'clock P. M. and seven o'clock A. M., to play any radio, phonograph or other musical instrument in a manner so loud as to be calculated to disturb the sleep of ordinary persons in near-by residences, or so loud as to unreasonably disturb or interfere with the peace and comfort of the occupants of a near-by residence or residences.

902. *Penalty.* Any person violating any provision of this ordinance, upon conviction, shall be punished by a fine not exceeding one hundred dollars ($100.00), and by a sentence to imprisonment or hard labor not exceeding six months, one or both.

903. *Holding Clause.* If any section or provision of this ordinance shall be held invalid, such holding shall not invalidate any other section or provision hereof.

ORDINANCE OF BOSTON, MASSACHUSETTS

Ordinances of 1931 Chapter 4

Prohibiting Certain Unnecessary Noises

Section 1. No person owning or having the care, custody or possession of any musical instrument, radio set, phonograph, victrola or other machine or device for producing or reproducing sound shall operate or use or permit to be operated or used such machine or device in such a manner as to disturb the peace and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such machine or device between the hours of twelve o'clock midnight and seven o'clock a. m. in such a manner as to be plainly audible at a distance of one hundred feet from the building or structure in which it is located shall be *prima facie* evidence of a violation of this ordinance. Nothing

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herein contained shall be construed to prohibit playing by a band or orchestra in a hall, building or in the open air, but this exception shall not apply to a reproduction of such playing by any machine or device.

Section 2. Any person, firm or corporation violating the provision of this ordinance shall be subject to a penalty not exceeding twenty dollars for each offense.

ORDINANCE OF GLENDALE, CALIFORNIA

Ordinance No. 1514

An Ordinance regulating the use of loud speakers.

Be it ordained by the Council of the City of Glendale:

Section 1. That it shall be unlawful for any person, copartnership, association, firm, or corporation knowingly or wantonly to use or operate, or to cause to be used or operated any mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in any public or private place in such manner that the peace and good order of the neighborhood is disturbed or that persons owning, using, or occupying property in the neighborhood are disturbed or annoyed.

Section 2. That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the City Jail of the City of Glendale or in the County Jail of the County of Los Angeles for a period of not more than six (6) months, or by both such fine and imprisonment.

ORDINANCE OF HARTFORD, CONNECTICUT

Sec. 358, Revised Ordinances of 1931

When any radio or similar device, in the opinion of the board of health, disturbs, or tends to disturb, the health of persons in its vicinity, the board of health may declare the operation of this radio or similar device to be a public nuisance and dangerous to health, and may prohibit its operation or issue such orders concerning the time or manner of its operation as, in the opinion of the board of health, may be necessary; . . .

ORDINANCE OF PONTIAC, MICHIGAN

Ordinance No. 809

Regulating Noise Making Devices

Adopted June 4, 1929
Effective June 14, 1929

An Ordinance relative to the use of Noise Making Devices.

The City of Pontiac ordains:

Section 1. The operating or maintaining of noise making, noise amplifyyng or noise producing instruments or devices by which the people or good order of the neighborhood is disturbed, is hereby declared a nuisance. It shall be unlawful for any person, firm or corporation, by himself or another, to operate or maintain any radio, phonograph, player piano, calliope or other noise making amplifying or noise producing instrument or device in any public or private place in such manner or by which the people and good order of the neighborhood is disturbed, or persons owning or occupying property in the neighborhood are disturbed.

Section 2. Any person, firm or corporation violating the provisions of this ordinance shall be punished by a fine not to exeed one hundred dollars ($100.00), or imprisonment in the County Jail for not more than ninety days, or both such fine and imprisonment, in the discretion of the court.

A model ordinance covering all abuses growing out of the use of radio receiving sets is set forth hereinafter.

The ordinances of the Cities of Richmond, Va., and Madison, Wis., are examples of ordinances intended to prevent all unnecessary noise but containing sections specifically applicable to the use of radio receiving sets. While

these general noise ordinances are not set forth in this report copies will be furnished to any city attorney by the *National Institute of Municipal Law Officers* upon request.

B. Use of Radio Receiving Sets in Advertising by Loud-speakers and Sound Trucks

Twenty-eight ordinances regulating the use of radio receiving sets in advertising by loud-speakers and sound trucks have been used in this study.[1] These ordinances in general forbid the use of loud-speakers on radios to attract crowds for commercial purposes or for commercial advertising in general. The ordinances of the Cities of Louisville, Ky., St. Paul, Minn., Toledo, Ohio, Topeka, Kan., Troy, N. Y., Oak Park, Ill., Knoxville, Tenn., and White Plains, N. Y., are hereinafter set forth as examples of such ordinances. There is also set forth the comprehensive ordinance of the City of Duluth, Minn., regulating and licensing the business of selling or furnishing of broadcasting services within the City. A model ordinance covering all abuses growing out of the use of radio receiving sets is set forth hereinafter.

In *Brachey* v. *Maupin*, 277 Ky. 467, 126 S. W. (2d) 881, 121 A. L. R. 969 (1939) the plaintiff sought to restrain his prosecution under an ordinance regulating operation of sound trucks on the streets of the City of Louisville. The ordinance provided as follows:

[1] Atlantic City, N. J.; Buffalo, N. Y.; Canton, Ohio; Colorado Springs, Colo.; Dayton, Ohio; Des Moines, Iowa; Detroit, Mich.; Duluth, Minn.; Glendale, Calif.; Knoxville, Tenn.; Lincoln, Neb.; Los Angeles, Calif.; Oak Park, Ill.; Plainfield, N. J.; Portland, Ore.; Rockford, Ill.; Sacramento, Calif.; Saginaw, Mich.; Saint Paul, Minn.; Salt Lake City, Utah; San Antonio, Tex.; San Diego, Calif.; Seattle, Wash.; Toledo, Ohio; Topeka, Kan.; Troy, N. Y.; Utica, N. Y.; White Plains, N. Y.

"It shall be unlawful for any person, firm or corporation to operate or cause to be operated any vehicle or

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truck known as a sound truck, when such operation includes the sounding of or causing to be sounded, any bell, bells or horn, or amplifier, or loud-speaker or radio or other mechanical sound or noise producing instruments or appliance or music or any other sound producing instruments or appliances operated by hand, steam, air or electricity or other means upon any of the streets of the City of Louisville, lying within the area bounded by the Ohio River, Preston Street, Breckinridge Street and Eighth Street, at any hour or time of the day or night; and it shall be unlawful for any person, firm or corporation to operate or cause to be operated any such vehicle or truck in the manner hereinabove described within two city blocks or city squares of any hospital sanitarium or sanatorium at any hour or time of the day or night, and it shall be unlawful to operate or cause to be operated any such vehicle or truck in the manner above described at any other place or places within the corporate limits of the City of Louisville, except between the hours of nine A. M. and six P. M."

The Court held the ordinance valid and reversed a judgment for the plaintiff. Concluding that the plaintiff's sound truck was a potential nuisance, and when in use, an actual nuisance, the Court held that there could be no doubt of the right of the city council to enact the ordinance as a police power regulation for the protection and safety of citizens of the city. The court accepted the city's evidence

that sound trucks increased the hazards attendant upon use of city streets and affected the well-being of persons within the restricted areas. The Court held that the right of the city to prohibit business in a limited district was well settled and declared that an ordinance so providing was regulatory, not prohibitory. The prohibition of the use of the trucks during the time people usually slept was likewise held to be a reasonable exercise of the police power.

Another case directly in point is *People* v. *Caponigri*, 6 N. Y. Supp (2d) 577 (Magistrate's Court Borough of Brooklyn 1938) involving similar noise regulations.

In some cases the courts have upheld municipal ordinances prohibiting advertising of other than the truck owner's own products by advertising signs upon the outside of trucks using the public streets. *People* v. *Kearns*, 5 N. Y. Supp. (2d) 590, (N. Y. Sup. Ct. 1938); *Noll* v. *Griffin*, 100 Fla. 152, 129 So. 511 (1930); *Fifth Avenue Coach Co.* v. *New York City*, 221 U. S. 467, 31 Sup. Ct. 709, 55 L. ed. 815 (1911); *Chicago Park District* v. *Canfield*, 370 Ill. 447, 19 N. E. (2d) 376 (1939). See generally *McQuillin Municipal Corporations*, § 988.

ORDINANCE OF ST. PAUL, MINNESOTA

C. F. No. 44666—Ordinance No. 6012

An Ordinance prohibiting the use of radio instruments or musical instruments within any building in the City of St. Paul where the sound therefrom is cast directly upon the public streets for the purpose of advertising or attracting the attention of the passing public, and declaring such instruments to be a nuisance.

The Council of the City of St. Paul does ordain:

1294. Section 1. Hereafter it shall be unlawful for any person to maintain and operate in any building in the City of St. Paul any radio device or musical instrument

where the sound therefrom is cast directly upon the public streets of the City of St. Paul and where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public.

1295. Section 2. Any such instrument or device operated in the manner prescribed in Section 1 hereof and for the purposes mentioned in said section, is hereby declared to be a nuisance, punishable, by a fine of not exceeding One Hundred Dollars, or by imprisonment for not exceeding ninety days.

Section 3. This ordinance is hereby declared to be an emergency ordinance rendered necessary for the preservation of the public peace, health and safety.

Section 4. This ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Council April 5, 1923.
Approved April 5, 1923.

ORDINANCE OF TOLEDO, OHIO

An Ordinance No. 9347

Prohibiting any device, radio, or other apparatus emitting a noise which constitutes a nuisance.

Be it ordained by the Council of the City of Toledo:

Section 1. That no person shall erect or locate any device, apparatus, radio, ticker or other noise or noise emitting device, in the front part of his premises or in front of his premises in the City of Toledo for general advertising purposes of soliciting trade or soliciting attention to any goods, wares, merchandise, instrument, or device offered for sale, which shall, by mechanical or electrical means, emit any sounds or noises so as to annoy and disturb passers-by on the public thoroughfares.

Section 2. That no person shall equip any vehicle that is operated upon any public street or thoroughfare of the

City of Toledo, with any device, apparatus, radio, ticker, or other noise emitting device which shall, by mechanical or electrical means, emit any sounds or noises so as to annoy or disturb passers-by on the public thoroughfares; providing that this section shall not apply to vehicles in parades, circuses and/or special celebrations if permits have been first procured from the Director of Public Safety.

Section 3. That any such device, apparatus, radio, ticker or noise emitting device, as described in the foregoing sections, shall constitute a nuisance.

Section 4. That the word "person," as used in this ordinance, shall be construed to mean any natural person, firm or corporation. That the word "operated," as set forth in Section 2 of this ordinance, shall be construed to include any vehicle standing upon any public street or thoroughfare.

Section 5. That Sections 1 and 2 of this ordinance shall

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be construed independently, and if one of such sections is declared invalid, it shall not affect the validity of the other.

Section 6. Any person who violates any of the provisions of this ordinance shall, upon conviction, be fined for the first offense, not more than twenty-five ($25.00) dollars, and for each additional offense, not more than fifty ($50.00) dollars.

Section 7. That Ordinance No. 8413, passed October 20th, 1930, be and the same is hereby repealed.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed June 20, 1932.

JOSEPH WAWRZYNIAK,
President Pro Tem. of Council

Attest: A. D. Payne, Clerk of Council.

ORDINANCE OF TOPEKA, KANSAS

Ordinance No. 6818

An Ordinance making it unlawful to play or operate or use upon the public streets or alleys of the City of Topeka, any device known as a loud-speaker or sound amplifier; calliope, or any purported musical instrument; providing penalties for the violation thereof, and repealing Ordinance No. 6212, approved March 4, 1932.

Be it ordained by the Board of Commissioners of the City of Topeka:

Section 1. That it shall be unlawful for any person, firm, society or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose, on the streets or alleys of the City of Topeka, any device known as a loud-speaker or sound amplifier, or radio with a loud-speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises.

Section 2. That any person, firm, society or corporation or anyone acting for or on behalf of any of said persons, violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $5.00 nor more than $25.00 for each offense.

ORDINANCE OF TROY, NEW YORK

An Ordinance to regulate the maintenance and operation in any building or on any premises the use of radio and other mechanical devices.

The City of Troy, in Common Council convened ordains as follows:

Section 1. It shall be unlawful for any person to main-

tain and operate in any building or on any premises in the City of Troy any radio device or mechanical musical instrument or device of any kind whereby the sound therefrom is cast directly upon the public streets and places and where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated in or upon such premises that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place or of persons in neighboring premises.

Section 2. This ordinance shall take effect immediately.

Approved as to form, May 15, 1930.

T. STEWART HUBBARD,
Corporation Counsel.

Passed June 5th, 1930.

ORDINANCE OF OAK PARK, ILLINOIS

The Revised Municipal Code of Oak Park of 1937

23.03. Advertising by Radio, Phonograph or Other Mechanical Device. Any person, firm or corporation, who operates or causes to be operated upon any premises within the Village of Oak Park any talking machine, radio or other mechanical device for the purpose of advertising any goods, wares, merchandise or of attracting attention and inviting the patronage of any person to any business whatsoever in such a way as to disturb the peace, and good order, of society or disturb the peace of any person, firm or corporation in the ordinary conduct of business shall be guilty of a misdemeanor.

ORDINANCE OF KNOXVILLE, TENNESSEE

Ordinance No. 290

An emergency ordinance to amend Ordinance No. 96 passed July 3, 1928, entitled "An emergency ordinance to regulate the use of radios, loud-speakers, phonographs and other musical or noise making instruments or devices in connection with any business.

WHEREAS, The Council of the City of Knoxville, did on July 3, 1928, pass Ordinance No. 96 with the foregoing caption and reading as follows:

> WHEREAS, Various operators of business of the City of Knoxville use or play different types of musical instruments such as radios, loud-speakers, phonographs and other musical or noise making instruments or devices in connection with business, and
>
> WHEREAS, An emergency exists in that the use of such instruments or devices should be prohibited in the interest of the public health and welfare, now, therefore,
>
> *Be it ordained by the Council of the City of Knoxville:*
>
> Section 1. That radios, loud-speakers, phonographs and other such stationary musical or noise making instruments or devices shall not be used in connection with any business in the City of Knoxville unless the same are more than forty (40) feet from any public street or sidewalk, provided this ordinance shall not apply to places where booths are maintained or other methods used so such instruments cannot be heard from the streets and provided further that it is not the intention of this ordinance to prohibit the use

of musical instruments in homes or by beggars on the streets.

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Section 2. That any violation of this ordinance shall be and is hereby declared a misdemeanor and punishable by a fine of not less than $5.00 nor more than $50.00.

Section 3. That this ordinance shall take effect from and after its passage, the public welfare requiring it.

J. A. FOWLER
President Officer of the Council

W. H. STAPLETON, Recorder

and

WHEREAS, The foregoing ordinance is broader than the public health and welfare requires, and

WHEREAS, An emergency exists in that the existence of said ordinance is interfering with the conduct of the radio, phonograph and musical instrument business in the City, now, therefore,

Be it ordained by the Council of the City of Knoxville, That the foregoing Ordinance No. 96 be amended in the following particulars, to wit:

That Section 1 of the said ordinance be eliminated and there be inserted in its place and stead the following, to wit:

"That speakers upon radios, phonographs and other musical instruments or devices shall not be used on the outside of a building on any public street in the City of Knoxville, nor shall any radio, phonograph or other musical instrument on the inside of a building be operated so as to constitute a nuisance to adjoining property or to people upon the public streets or sidewalks, provided that it is

not intended that this ordinance apply to the use of musical instruments in homes or by beggars on the streets."

This ordinance shall take effect from and after its passage, the public welfare requiring it.

JAMES A. TROUT,
President Officer of the Council

W. H. STAPLETON, Recorder

Passed first and final reading: May 20, 1930.

ORDINANCE OF WHITE PLAINS, NEW YORK

An Ordinance regulating the use of phonographs, mechanical pianos and radio receivers and prohibiting annoying sounds therefrom.

(Adopted May 20, 1929)

The Common Council of the City of White Plains, by virtue of the power and authority vested in it by law, hereby ordains and enacts as follows:

Section 1. No person shall knowingly permit upon any portion of premises owned or leased by him, or under his control, which is occupied or used for business or commercial purposes, any phonograph, mechanical piano or any instrument for the reception of sounds transmitted by wireless transmission, commonly known as radio receivers, which device or instrument has especially attached amplifiers which make or emit loud noises, and which said phonograph, mechanical piano or radio receiver is so placed and operated that the sounds coming therefrom can be heard by travelers on the street, to the annoyance or inconvenience of such travelers or of persons in neighboring premises or which shall cause persons to gather in front of such premises. This shall not be construed as prohibiting the use of radio amplifiers emitting loud noises during unusual national, state or municipal events, such as presidential

and/or gubernatorial elections and inaugurations or national sporting events such as are commonly known as "World Series" or any unusual event of local interest for the advancement of radio.

Section 2. Any person or persons violating the provisions of this ordinance shall, upon conviction thereof, be liable for each offense to a fine of not more than ten dollars or by imprisonment for not more than ten days or by both such fine and imprisonment.

Section 3. This act shall take effect immediately.

ORDINANCE OF DULUTH, MINNESOTA

Ordinance No. 6034

By Commissioner Culbertson (by request)

An Ordinance to regulate and license the business of selling or furnishing broadcasting service within the corporate limits of the City of Duluth; to define certain terms, and to provide penalties for violations of such ordinance.

The City of Duluth does ordain:

Section 1. That it shall be unlawful for any person, either directly or indirectly, or by himself or through another, to engage, within the corporate limits of the City of Duluth, in the business of selling or furnishing, or otherwise providing sound broadcasting service, unless thereunto first licensed by the City Council of the City of Duluth in accordance with the terms of this ordinance.

Section 2. That for the purpose of this ordinance, the following terms shall have the following meaning:

(a) "Person"—Any natural person and any firm, copartnership, corporation, association or company however or wherever created, existing or organized.

(b) "Sound Broadcasting Service"—The use of sound broadcasting devices which broadcast commercial advertising or other announcements in or over the public highways or public grounds of the City of Duluth, either in, from or

on a moving vehicle, or otherwise, by means of any recording equipment, sound truck, amplifier, phonograph, or other sound equipment.

(c) "Sound Truck"—Any vehicle propelled on wheels and used for and in connection with carrying on the business of selling, furnishing or otherwise providing sound broadcasting service.

Section 3. That before any person shall be granted a license to engage in such business, he shall file with the City Clerk an application, in writing, stating therein the name and address of such applicant, the address of the place of business

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of such applicant, a brief description of the type of vehicle and broadcasting equipment to be used in connection with the business of the applicant, the name of the manager, director or other officer of such applicant who shall have the direct and immediate control of the business of the applicant, together with such other information as the Council may from time to time require; and in addition thereto, the applicant shall accompany such application with the sum of $10.00, which sum is hereby declared to be the annual license fee for conducting the business of selling, furnishing or otherwise disposing of sound broadcasting service. In the event that the applicant is denied a license, the amount of money accompanying such application shall be immediately returned to the applicant by the proper officers of the City of Duluth without further act upon the part of the City Council. All licenses granted under this ordinance shall expire on April 30th in each year; and no licenses shall be issued for a sum less than $5.00. Such application shall be immediately referred for investigation to the Commissioner of Public Safety, who shall report the result of such investigation to the City Council, whereupon it may refuse or grant a license to such applicant.

Section 4. That during the period of time from May 16th to October 15th, inclusive, the licensee shall be permitted to conduct such broadcasting business on Superior Street, First Street and Second Street, from Eighth Avenue East to Eighth Avenue West, inclusive, from 12:00 noon to 1:00 P. M., and from 4:30 P. M. to 5:30 P. M.; and during the period from October 16th to May 15th, inclusive, such licensee may conduct such business in the aforesaid district from 12:00 noon to 1:00 P. M. and from 5:00 P. M. to 6:00 P. M.

Section 5. That except as provided in Section 4 of this ordinance, the licensee may conduct such business in all other parts of the City for three consecutive hours at any time between the hours of 8:00 A. M. and 8:00 P. M., except that the vehicle or other device being used at the time for the carrying on of such business shall not, if standing still, broadcast for more than five consecutive minutes in any one place while so standing; and except that if the licensee shall make written request to the City Council for permission to broadcast after 8:00 P. M., stating in such application the reason or necessity for requiring such permit, the Council may, upon investigation of such request, grant a temporary permit to such licensee to conduct such business after the hour of 8:00 P. M. under such regulations as the Council may determine.

Section 6. That it shall be unlawful for any licensee to operate any sound truck within one block of any hospital, public or parochial school; nor shall any person operating a sound truck broadcast sound therefrom within two blocks of any other sound truck then being used for broadcasting. That no sound truck shall broadcast in such manner as to produce sound audible for a greater distance than one block from such sound truck.

Section 7. That nothing contained in this ordinance shall be construed to prevent the use of a sound truck or sound broadcasting device as defined in this ordinance, or

otherwise, in connection with a funeral procession or religious services, provided, however, that no sound truck or sound broadcasting device shall be operated for broadcasting purposes within one block of any house of worship, nor in such manner as to produce sound audible for a greater distance than one block from such sound truck, nor shall any sound truck or sound broadcasting device used in connection with such religious services broadcast for more than five consecutive minutes while standing still in any one block when such truck or device is being used in or upon any public highway; nor shall the terms of this ordinance be construed to prevent the production of music in connection with any parade authorized under any provision of law; nor shall such ordinance prevent any musical performance upon any public grounds, when a permit therefor has first been obtained from the City Council of the City of Duluth; nor shall such ordinance prevent the use of amplifiers or other sound-producing instruments in connection with any athletic, competitive or recreational event held on public playgrounds, athletic fields or in public parks under consent of municipal authority or the authority of the Board of Education of the City of Duluth; nor shall it apply to police and fire apparatus while used in the performance of public duty; nor shall such ordinance prevent any person who has obtained from the City Council a license to exhibit a circus, menagerie, dog and pony show, or similar exhibition, from using a sound producing device for the purpose of advertising said exhibition under such restrictions as the City Council may provide.

Section 8. That nothing contained in this ordinance shall be construed to prevent any person from using sound broadcasting devices or amplifiers in connection with the broadcast of any speech or lecture from any building between the hours of 8:00 P. M. and 11:30 P. M.

Section 9. That no such license shall be transferred without the approval of the City Council; and every appli-

cation for transfer of license shall be accompanied by the sum of $3.50, which is the estimated cost of publishing the resolution authorizing such transfer. Each such license may be revoked by the Council for cause; and without excluding other causes of revocation, the Council shall revoke such license if the licensee therein or any person acting on behalf of such licensee shall violate the terms of this ordinance or any ordinance of the City of Duluth or statute of the State of Minnesota relating to the preservation of the public peace, good order and welfare of said City of Duluth.

Section 10. That the provisions of this ordinance are hereby declared to be separable; and if any part or provision thereof shall be declared or adjudged to be invalid, such declaration or adjudication shall not affect or invalidate the remaining parts or provisions of such ordinance.

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Section 11. That any person violating any of the provisions of this ordinance, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by a fine of not more than $100.00, or by imprisonment in the County Jail for not more than eighty-five days. Each violation shall constitute a continuing offense, and upon conviction thereof, the person guilty of each of such violations shall be punished in accordance with the terms of this section.

Section 12. That the licensee shall not use or operate more than one sound truck for sound broadcasting service at any time upon or in any of the public highways or public grounds of the City of Duluth.

Section 13. That this ordinance shall take effect and be in force thirty days from and after its passage and publication.

MODEL ORDINANCE OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS TO PREVENT ABUSES IN THE USE OF RADIO RECEIVING SETS AND OTHER SOUND PRODUCING OR SOUND REPRODUCING DEVICES

An Ordinance to prevent the using of radio receiving sets, musical instruments, phonographs or other machines or devices for the producing or reproduction of sound so as to cause unnecessary and harmful noise, and to provide a penalty for the violation of this ordinance.

WHEREAS, The use or playing of radio receiving sets, musical instruments, phonographs or other machines or devices for the producing or reproduction of sound so as to make such use or playing audible outside of the house, building, structure or vehicle between the hours of eleven o'clock P. M. and seven o'clock A. M. disturbs the peace and comfort of the inhabitants of this City and constitutes a public nuisance; and

WHEREAS, The use or playing of radio receiving sets, musical instruments, phonographs, loud-speakers or sound amplifier or other machines or devices to emit sound for advertising purposes or to attract the attention of the public to the annoyance and inconvenience of the public constitutes a public nuisance, now therefore

Be it ordained by the City Council of the City of.....

Section 1. *Definition of "Person."* The word "person" as used herein shall include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

Section 2. *Unnecessary Sound from Radio, etc. Prohibited.* No person owning or having the care, custody or possession of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or the reproducing of sound shall play, use, operate, or

permit to be played, used or operated such set, instrument, phonograph, machine or device in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of eleven o'clock P. M., and seven o'clock A. M. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be *prima facie* evidence of a violation of this ordinance.

Section 3. *Loud Speakers, Amplifiers for Advertising, etc. Prohibited. Exception stated.* No person owning or operating any building, structure or vehicle shall play, use, operate or permit to be played, used or operated any radio receiving set, musical instrument, phonograph, loud-speaker, sound amplifier, or other machine or device for the producing or reproducing of sound for the purpose of advertising or attracting the attention of the public to such building structure or vehicle. This section and Section 2 hereof shall not be construed as prohibiting the use of sound amplifiers, loud speakers, or other devices emitting loud noises during unusual and non-commercial national, state or municipal events of general public interest.

Section 4. *Penalties for Violation.* Any person who violates any provisions of this ordinance shall be deemed guilty or a misdemeanor, and upon conviction thereof shall be punishable by a fine of not exceeding $500.00 or imprisonment for not more than six months. Each person shall be deemed guilty of a separate offense for each day during any portion of which any violation of the provisions of this ordinance is committed, continued or permitted.

Section 5. *Separability.* It is the intention of the City Council that each separate provision of this ordinance shall

be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this Act be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

Appendix B

[SHIBE PARK, Philadelphia]

[Excerpt from New York Times, Saturday Oct. 28, 1944, page 1:]

PHILADELPHIA, Oct. 27—President Roosevelt, in fighting mood, gave tonight to 50,000 cheering Pennsylvanians crowded into Shibe Park an accounting, marked by no apologies or reservations, of his stewardship as Commander in Chief of the armed forces in a war which has led to twenty-seven D-days of "triumphant success" on battlefronts 13,000 miles apart.

[SOLDIER FIELD, Chicago]

[Excerpt from New York Times, Sunday Oct. 29, 1944, page 1:]

PRESIDENT OFFERS POST-WAR PROGRAM FOR AIDING BUSINESS

Addressing 100,000 in Chicago Soldier Field, He Pledges Prosperity in Peace

CHICAGO, Oct. 28—President Roosevelt, in a bid for Illinois' twenty-eight electorial votes made directly to an estimated 110,000 voters filling Soldier Field tonight and to an outside overflow throng of 150,000, pledged himself to a post-war security program which would keep the United States a country of high pay and adequate return for farm and factory products. . . .

Soldier Field was packed solidly tonight from the ground to the top row. It could not begin to hold the outpouring. A larger number than the 110,000 who filled every seat and left a row of standees chattering around the upper rim, were outside packed hundreds deep on the parking areas around the stadium.

. . . The President, as on last night at Shibe Park rally in Philadelphia, spoke from his automobile which had been run up to the platform. He spoke hatless. . . .

[FENWAY PARK, BOSTON]

[Excerpt from New York Times, Sunday November 5, 1944, page 1:]

BOSTON, Nov. 4—President Roosevelt, in the final major, round-up of his campaign for re-election at Fenway Park tonight, declared that his opponent, Governor Dewey, had revealed in his campaign "a shocking lack of trust in America" and "faith in democracy."

Never before in his lifetime, Mr. Roosevelt told a roaring and applauding crowd which crowded and overflowed the ball park, had a campaign been filled with "such misrepresentation, distortion and falsehood."

. . . It appeared that all of the 45,000 crowded into the grandstand and bleachers took up the chant, as the cheers died down:

"We want Roosevelt!" . . .